

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

FILED/ACCEPTED

MAR 23 2012

Federal Communications Commission  
Office of the Secretary

In re

**MARITIME COMMUNICATIONS/LAND  
MOBILE, LLC**

Participant in Auction No. 61 and Licensee of  
Various Authorizations in the Wireless Radio  
Services

Applicant for Modification of Various  
Authorizations in the Wireless Radio Services

Applicant with **ENCANA OIL AND GAS (USA),  
INC.; DUQUESNE LIGHT COMPANY; DCP  
MIDSTREAM, LP; JACKSON COUNTY  
RURAL MEMBERSHIP ELECTRIC  
COOPERATIVE; PUGET SOUND ENERGY,  
INC.; ENBRIDGE ENERGY COMPANY,  
INC.; INTERSTATE POWER AND LIGHT  
COMPANY; WISCONSIN POWER AND  
LIGHT COMPANY; DIXIE ELECTRIC  
MEMBERSHIP CORPORATION, INC.;  
ATLAS PIPELINE – MID CONTINENT, LLC;  
DENTON COUNTY ELECTRIC  
COOPERATIVE, INC. , DBA COSERV  
ELECTRIC; AND SOUTHERN CALIFORNIA  
REGIONAL RAIL AUTHORITY**

EB Docket No. 11-71  
File No. EB-09-IH-1751  
FRN: 0013587779

Application File Nos. 0004030479,  
0004144435, 0004193028, 0004193328,  
0004354053, 0004309872, 0004310060,  
0004314903, 0004315013, 0004430505,  
0004417199, 0004419431, 0004422320,  
0004422329, 0004507921, 0004153701,  
0004526264, 0004636537,  
and 0004604962

To: Marlene H. Dortch, Secretary  
Attention: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S REPLY TO  
MARITIME'S STATUS REPORT AND RESPONSE**

1. On March 22, 2012, Maritime Communications/Land Mobile, LLC (Maritime)  
filed its Status Report on Discovery and Response to the Enforcement Bureau's Request for the

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Presiding Judge's Intervention (Response).<sup>1</sup> The Enforcement Bureau (Bureau) requested the Presiding Judge's intervention to address continuing deficiencies in Maritime's responses to Interrogatory Nos. 13, 14 and 15 of the "Joint Interrogatories to Maritime Relating to Nonconstruction and Discontinuance of Site-Based Operations."<sup>2</sup> Maritime's Response to the Bureau's Intervention Request has muddied the record concerning the completeness of its interrogatory responses.

2. The Bureau believes it is in the public interest for the Presiding Judge to have an accurate record as he considers the issues raised in the Bureau's Intervention Request.

Accordingly, the Bureau offers the following summary of pertinent facts:

- ***On the Incumbent Licenses:*** Maritime offers no legal support for its argument that Issue (g) – and thus the question of permanent discontinuance – is moot as to 60 of the 67 site-based authorizations at issue because these authorizations are subsumed by geographic licenses that Maritime obtained at a later date. Maritime continues to have the responsibility as a licensee to construct and to maintain the operations of these site-based authorizations. There is no legal basis, therefore, for Maritime's unilateral decision to deny the Bureau discovery concerning these 60 site-based authorizations in response to Interrogatory Nos. 13, 14 and 15. Yet, Maritime admits that **"it is not certain"** of the current status of these 60 subsumed incumbent licenses **"and has made no effort to verify their status."**<sup>3</sup>
- ***On Interrogatory No. 13:*** Maritime concedes that, in response to this interrogatory, it identified only those stations that were "fully constructed, operational, and capable of handling two way traffic" and those that were subject to third-party leases.<sup>4</sup> However, whether a station is *capable of operating* is clearly different from whether that station is *actually* operating. Interrogatory No. 13 clearly requests the latter. And, even if some of the stations at issue are subject to a third-party lease, Maritime must still confirm whether those stations are currently operating.

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<sup>1</sup> See Maritime's Status Report on Discovery and Response to the Enforcement Bureau's Request for the Presiding Judge's Intervention, filed on March 22, 2012.

<sup>2</sup> See Enforcement Bureau's Status Report On Maritime's Discovery Deficiencies And Request For Presiding Judge's Intervention (Intervention Request), filed on March 20, 2012.

<sup>3</sup> See Response at 3.

<sup>4</sup> See Response at 7.

Furthermore, Maritime's quibbling that Interrogatory No. 13 asks only whether Maritime's stations are currently operating and not whether its stations are currently "transmitting a signal" is a non-starter. The Bureau made clear to Maritime during the March 14, 2012 negotiations that it was looking for Maritime to confirm, for each station, whether it is on-the-air or transmitting a signal and whether it has been continuously on-the-air or transmitting a signal since its construction.<sup>5</sup> As memorialized in a letter dated that same day, Maritime agreed to provide this information.<sup>6</sup> For Maritime to now take issue with the Bureau's insistence that it confirm whether its stations are on-the-air and have been on-the-air is disingenuous at best.

- **Interrogatory Nos. 14 and 15.** Together, these interrogatories ask Maritime to identify any stations for which operations were discontinued, the reasons why any such operations were discontinued, the date operations were discontinued, whether operations were resumed, and whether these stations are currently off-the-air. In response to these interrogatories, Maritime provided a chart identifying stations for which operations had been temporarily discontinued, the date operations were discontinued, and the reason for such discontinuance.<sup>7</sup> It did not confirm whether operations had been resumed (as requested by Interrogatory No. 14) or confirm whether these or any other stations were currently off-the-air (as requested by Interrogatory No. 15). There should be no reason why Maritime cannot provide this information.

3. The Bureau's Request for the Presiding Judge's Intervention is not, as Maritime suggests, simply a "tactical effort" by the Bureau "to create an erroneous impression of [Maritime's] uncooperativeness."<sup>8</sup> By its own admission, Maritime has not made any effort to verify whether 60 of the 67 site-based authorizations at issue are "on-the-air" and thus has not "fully and completely" responded to Interrogatory Nos. 13, 14 and 15 as required by the Presiding Judge's January 27, 2012 Order.<sup>9</sup> Indeed, Maritime refuses even to engage in this exercise – suggesting instead that it is somehow the Bureau's obligation to uncover this

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<sup>5</sup> See also Order FCC 12M-19 (ALJ, rel. Mar. 12, 2012), noting that the attached chart was a starting point for these negotiations.

<sup>6</sup> See Exhibit A to the Bureau's Intervention Request.

<sup>7</sup> See Table 2 to Exhibit B to the Bureau's Intervention Request (stations identified with Status Code "T") and Exhibit C to the Bureau's Intervention Request at Table 3.

<sup>8</sup> Response at 8.

<sup>9</sup> See Order, FCC 12M-7 (ALJ, rel. Jan. 27, 2012).



information on its own.<sup>10</sup> This is outrageous. The Bureau has done its job – it has requested factual information from Maritime that is relevant to Issue (g) – namely, whether each of its stations is currently on- or off -the-air. As a Commission licensee, Maritime should have this information available to it. Indeed, this is fundamental information that any Commission licensee should know. Maritime should be directed to stop making excuses and to get on with providing this discovery so that this case may move forward.

4. For the foregoing reasons, and for those addressed in the Bureau's Request for the Presiding Judge's Intervention, the Bureau implores the Presiding Judge to issue an order compelling Maritime to provide the following information, affirmed under oath:

- A chart, organized by call sign and location, indicating with a "yes" or "no" whether each location is currently on-the-air, *i.e.*, transmitting a signal;
- A chart, organized by call sign and location, indicating with a "yes" or "no" whether each location has been continuously on-the-air since the date that location was constructed;
- A chart, organized by call sign and location, indicating with a "yes" or "no" whether the operations of the stations identified in Table 3 of Maritime's Errata resumed and the date on which any such operations resumed; and
- For any call sign and location which Maritime indicates is not currently on-the-air, a chart that specifies the date that call sign or location went off the air and the reason why.

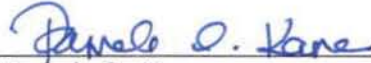
The Bureau also reiterates its request that the Presiding Judge admonish Maritime that if it fails to provide the information in the manner set forth above by a prescribed date, the Presiding Judge will impose an adverse inference against it.

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<sup>10</sup> See Response at fn. 2.

Respectfully submitted,

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March 23, 2012

**CERTIFICATE OF SERVICE**

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 23<sup>rd</sup> day of March, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S REPLY TO MARITIME'S STATUS REPORT AND RESPONSE" to:

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